

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1312 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VINODCHANDRA N PATEL

Versus

BHAGWANDBHAI DHANJIBHAI

Appearance:

MR JC SHETH for Petitioner

MR JV DESAI for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 28/04/2000

ORAL JUDGEMENT

#. This revision application has been filed by the defendant - tenant challenging the decree of eviction passed by the learned 4th Joint Civil Judge (JD), Bharuch in Regular Civil Suit No.307/83 which was confirmed in appeal by the appellate court in Regular Civil Appeal

No.96/85. The respondents herein are the original plaintiffs. They are the owners of the suit premises. The aforesaid suit was filed by them against the defendant-tenant on the ground that the suit property was given to the defendant at the rate of Rs.52/- per month. The tenant had not paid the rent from 1.8.1979 upto 30.4.1982, that is, for 33 months, he was, therefore, subjected to the demand notice on 15.5.1982. After the notice, the amount was paid to the plaintiffs, but thereafter, the defendant again fell in arrears of rent from 1.5.1982, and therefore, he was again served with the notice on 6.7.1985. However, within one month, no arrears of rent was paid, and therefore, the aforesaid suit was filed for getting the decree for possession as well as for getting the arrears of rent.

#. The defendant appeared in the suit and filed his written statement at Exh.18. It was stated by the defendant that, he has incurred certain expenditures in repairing, and thereafter, the plaintiffs had agreed that, they will reduce the rent to Rs.35/- and the plaintiff No.1 himself was not accepting the rent. According to the defendant, the standard rent of the suit premises is Rs.35/- and not Rs.52/-. On this and other grounds, the aforesaid suit was resisted.

#. The trial court framed various issues at Exh.19, and thereafter, after recording the evidence of the parties, came to the conclusion that the tenant was not ready and willing to pay the rent. That he has not paid the rent within one month from the receipt of the suit notice, nor he has raised any dispute within one month from the receipt of the suit notice regarding the standard rent. Accordingly the trial court decreed the suit of the plaintiffs for possession on the ground of arrears of rent.

#. The aforesaid decree of the trial court was challenged by the tenant before the appellate court by filing Regular Civil Appeal No.96/85. The said appeal was heard by the Extra Assistant Judge, Bharuch, who by his judgment and order dated 30.6.1980 dismissed the said appeal with costs.

#. The present revision application has been filed by the original defendant - tenant against the aforesaid order of the appellate court.

#. It is not in dispute that the rent is payable by month. The opponents-landlords have given notice to the tenant as required by section 12(2) of the Bombay Rent

Act demanding the arrears of rent. The tenant has not complied with the suit notice by tendering any arrears of rent within one month from the receipt of the suit notice, nor any dispute of the standard rent was taken within a period of one month. In view of the aforesaid circumstances, the provision of section 12(3)(a) is clearly attracted.

#. The tenant has raised the dispute of the standard rent for the first time in the written statement. However, in order to get the protection under section 12(3)(b) of the Bombay Rent Act, the tenant was supposed to raise the dispute of the standard rent within one month from the receipt of the suit notice, which he has not done. In that view of the matter, both the courts below were absolutely justified in applying the provisions of Section 12(3)(a) of the Bombay Rent Act. In the present case, the rent is payable by month and there is also no taxation liability on the tenant to pay the taxes, and therefore, when the rent is payable by month, and when there is no dispute of the standard rent within one month, provision of Section 12(3)(a) is attracted. It is laid down by the Honourable Supreme Court in 31(1) GLR 209 that, when no dispute of the standard rent is taken within one month from the receipt of the suit notice and if the rent is payable by month, the case would fall under section 12(3)(a) of the Bombay Rent Act.

#. In view of the aforesaid position, I do not find any error of law in the impugned judgment of the appellate court. When all the ingredients of Section 12(3)(a) are present in the suit, the court has no other alternative, but to pass the decree of eviction under the said provision.

#. In that view of the matter, civil revision application deserves to be dismissed and accordingly the same is dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

##. At this stage, Mr.Desai, learned advocate for the opponents submitted that, the opponents have no objection if the applicant - tenant is given time to vacate the suit premises as the applicant - tenant will be required to make alternative arrangement. In the facts and circumstances of the case, the applicant - tenant is granted time upto 31.12.2000 to vacate the suit premises. Accordingly, the decree for possession shall not be executed till 31.12.2000. The aforesaid time is granted on condition that the applicant shall file usual

undertaking before this court within eight weeks from today. The applicant should clearly mentioned in the said undertaking that he is in exclusive possession of the suit premises and that without obstructing in any manner, he will hand over the vacant and peaceful possession to the opponents on or before the aforesaid date. The applicant should also pay mesne profits regularly till he vacates the suit premises. If, the aforesaid undertaking is not filed on or before the aforesaid date or subsequently, if there is any breach of the said undertaking, it will be open for the opponents-decree holders to execute the decree for possession forthwith.

(P.B.Majmudar,J.)

(pathan)